

September 8, 2004

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Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW – Room TW-A325
Washington, D.C. 20554

Filed via Electronic Filing

**Re: *Ex Parte* Presentation in the Proceeding Entitled "Nationwide
Programmatic Agreement Regarding the Section 106 National Historic
Preservation Act Review Process" – WT Docket No. 03-128**

Dear Ms. Dortch:

On Wednesday, September 8, 2004, the following individuals, representing both the companies indicated below and the Tower Siting Policy Alliance (the "Alliance"), met at the offices of the FCC in Washington D.C. with Jennifer Manning, Senior Legal Adviser to Commissioner Kathleen Q. Abernathy, to discuss issues relevant to the above-identified proceeding:

Ben Almond	Cingular
John Clark –	Perkins Coie LLP – Counsel to the Alliance
Mark Rubin	Western Wireless Corp.
Harold Salters	T-Mobile USA
Patrick Welsh	T-Mobile USA

On the same day, Messrs. Almond, Clark and Salters also met with Sam Feder, Legal Advisor to Commissioner Kevin J. Martin to discuss the same issues.

In both meetings, the industry representatives stated that their companies and the Alliance support the prompt adoption and release of the "Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process" ("NPA"), pending in the above-entitled proceeding.

In these meetings, the industry representatives discussed the points laid out in the document attached as Attachment "A," entitled "Key Reasons for Adopting the

Nationwide Programmatic Agreement." Copies of this document were also sent via email to Chief of Staff Bryan Tramont, Legal Advisor Sheryl Wilkerson, Legal Advisor to Commissioner Michael J. Copps Paul Margie, and staff at the Wireless Telecommunications Bureau, including Scott Delacourt, John Branscome, Jeff Steinberg, Day Abeyta, Frank Stilwell, and Amos Loveday.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John F. Clark". The signature is fluid and cursive, with the first name "John" being more prominent.

John F. Clark
Counsel to the Tower Siting Policy Alliance

JFC:jfc

Attachment "A"

Key Reasons for Adopting the Nationwide Programmatic Agreement

Submitted by the Tower Siting Policy Alliance
September 8, 2004

- **The Tower Siting Policy Alliance ("TSPA") (including American Tower Corporation, Cingular Wireless, SBA Communications, T-Mobile USA and Western Wireless) urges the Commission to adopt and release as soon as possible the Nationwide Programmatic Agreement for Review of Effects on Historic Properties ("NPA").**
- **The question of whether geographically licensed CMRS facilities are properly treated as "undertakings" under Section 106 should not prevent adoption of the NPA.**
- **The most controversial exclusions, one for industrial areas and the other for rights-of-way, have been discussed among interested parties, the most contentious issues have been largely addressed, and agreement is near on consensus compromise language.**

I. Why the Commission Should Promptly Adopt and Release the NPA

1. The NPA is intended to streamline, simplify and reduce unnecessary costs of complying with the Section 106 process for all parties, including the FCC, SHPOs and industry.
2. Delay in implementing the NPA has hurt the industry because of paralyzing regulatory uncertainty and the damaging buildup of backlog cases at the Wireless Bureau.
3. The Alliance believes that the NPA can provide needed regulatory relief and save unnecessary compliance costs by: (1) excluding from review projects that do not threaten historic properties; (2) eliminating expensive and unnecessary identification of potentially eligible properties; (3) allowing rapid, streamlined processing of the 80-90% of tower cases with no effects to historic properties; and (4) clarifying and imposing reasonable limits on consideration of visual effects from towers.

II. The Undertaking Issue Should Not Prevent Adoption of the NPA

1. The "undertaking issue," questioning whether geographically licensed wireless facilities are properly treated as section 106 undertakings, is a legitimate issue worthy of serious consideration, as raised by many in industry including some members of the Alliance.
2. The undertaking issue does not, however, impact all the facilities covered by section 106, that would also be covered by the NPA. The Commission clearly has jurisdiction and responsibility for Section 106 compliance for all point-licensed facilities, such as public safety, private, microwave and broadcast stations, and several others.
3. Therefore, the critically needed streamlining and backlog reduction that the NPA offers can best be provided by adopting the NPA now, while the undertaking issue can best be addressed separately, as a component issue whose needed resolution will clarify, but will not eliminate, the Commission's section 106 responsibilities.

III. The Controversial Exclusions for Rights-of-Way and Industrial Areas Have Benefited from Compromise Proposals that are Nearing General Acceptance

Since the release of the NPRM, two of the most controversial provisions in the NPA have been the exclusions in section III dealing with industrial areas and rights-of-way.

1. Right-of-Way Exclusion. Several months ago, industry sources proposed a compromise for Exclusion 5 dealing with rights-of way. We understand that this compromise has found acceptance by the Advisory Council on Historic Preservation ("ACHP"), the National Conference of State Historic Preservation Officers ("NCSHPO"), and the National Trust for Historic Preservation (the "Trust"). The Alliance supports the substance of the following compromise language:

5. SHPO consultation is not required for Facilities that are constructed within 50 feet of a right-of-way designated by a government for the location of communications towers or above-ground utility transmission lines and associated structures and equipment, and in active use for such purpose; provided:

(a) The proposed Facility is not substantially larger than already existing structures in the right-of-way (as defined by "substantial increase" in the Collocation Agreement); and

(b) The proposed Facility does not rest on a portion of the right-of-way that is within or immediately adjacent to a historic property or district.

2. Industrial-Area Exclusion. On August 25, 2004, the Trust proposed new compromise language for Exclusion 4 dealing with industrial areas. That proposal has since

undergone some refinements, and we now understand that the Trust, ACHP and NCSHPO have generally agreed to revised terms for this exclusion.

Based on its general acceptance, the Alliance supports the proposed compromise language it has reviewed, which includes the following key terms of height, distance and size:

4. Construction of a Facility 200 feet or less in height above ground level, on property used for industrial or commercial purposes and containing one or more significant structures totaling at least 100,000 square feet in size, such as a shopping mall, office building, office park, factory, storage facility, or similar structure, where all excavation will be on previously disturbed ground as that term is defined in Section VI.C.4., below, and provided that the Facility is not located in, on, or within 500 feet of, a historic property or district.